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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. RAMI NAJM ASAD GHANEM, aka "Rami Ghanem," Defendant.	No. CR 15-704(A)-SJO GOVERNMENT'S TRIAL MEMO Trial Date: 10/30/2018 Trial Time: 8:30 a.m. Location: Courtroom of the Hon. S. JAMES OTERO

Plaintiff United States of America, by and through its counsel of record, the United States Attorney for the Central District of California and undersigned counsel, hereby files its Trial Memo.

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This Trial Memo is based upon the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: October 26, 2018

Respectfully submitted,

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/s/
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UNITED STATES OF AMERICA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATUS OF THE CASE

A. Trial Status

On December 22, 2015, defendant Rami Najm Asad-Ghanem ("defendant") was charged in an original four-count indictment (the "original Indictment") with violations of 22 U.S.C. § 2778 (Arms Export Control Act), 18 U.S.C. § 554 (Smuggling), and 18 U.S.C. § 1956(a)(2)(A) (Money Laundering). A superseding indictment filed on March 24, 2017, charged defendant with three additional counts alleging violations of 18 U.S.C. § 372 (Conspiracy), 22 U.S.C. § 2778 (Arms Export Control Act), and 18 U.S.C. § 2332g (Conspiracy to Use and to Transfer Missile Systems Designed to Destroy Aircraft) (the "First Superseding Indictment" or "FSI"). On June 22, 2018, the Court granted the Government's Motion for Joinder Pursuant to Rule 13, thus joining the original Indictment and FSI for trial.

On July 20, 2018, defendant filed a notice withdrawing his previously-filed jury trial waiver. Trial is set to commence on October 30, 2018, at 8:30 a.m. Defendant is in custody pending trial.

On October 22, 2017, the Court granted the Government's unopposed application for a pre-trial ruling on the government's proposed trial indictment, thereby combining the charges in the original Indictment and FSI into a single Trial Indictment to be provided to the jury, with an appropriate cautionary instruction that the indictment or summary thereof is not evidence.

B. Length of Trial

1. Number of Witnesses

The government expects that its case-in-chief (with a reasonable allotment for cross-examination) will take three weeks to present. The government may call the following witnesses in its case-in-chief:

1. Homeland Security Investigations (HSI) Special Agent (SA) Matthew Peterson
2. HSI Undercover Agent known to defendant as Nader Kalani
3. HSI Source of Information, name known to defendant and his counsel
4. Dr. Robert Doherty
5. Dr. Peter Bartu
6. Sandro Kavsadze (recorded testimony pursuant to Rule 15)
7. Gia Devidze (recorded testimony pursuant to Rule 15)
8. Zurab Partsakhashvili (recorded testimony pursuant to Rule 15)
9. State Department employee Simon Davidson-Hood
10. Defense Department employee Timothy Williams
11. Hellenic National Police Lieutenant Aris Zagakos
12. HSI Foreign Service National Investigator William Tsakis
13. HSI Special Agent David Stone
14. Bureau of Prisons employee Tammi Greer

Defendant has indicated his intent to enter into a stipulation to the accuracy of certain translations from Arabic and Russian. Should defendant not enter into those stipulations, the government would also call the following witnesses:

15. Faiza Sultan
16. Hanadi Thomas

17. Katherine Hilkert

The government may call other witnesses as needed to establish the authenticity of government exhibits and the accuracy of translations of both written and recorded communications.

The government may seek to introduce evidence pursuant to stipulations or through judicial notice. The government may also call rebuttal witnesses if necessary following defendant's case.

In letters dated July 23, August 31, and October 17, 2018 the government provided notice under Federal Rules of Evidence 702, 703, and 705, Federal Rule of Criminal Procedure 16(a)(1)(G), and paragraph 10(b)(x) of the Court's standing criminal trials order that some of the anticipated testimony of witnesses whose testimony may be considered expert testimony, including the following: Robert A. Doherty, Ph.D, Peter Bartu, Ph.D, Simon Davidson Hood, Timothy Williams, Robert Whittington, HSI SA Matthew L. Peterson, and various linguists.

The letters identified the subject matter of the anticipated testimony as well as the qualifications of each witness to provide such testimony. The Court ordered that any objections to the expert disclosures be made before trial, so that they could be considered at a pre-trial hearing. (Dkt. 148.) Defendant made no such objections.

Pursuant to a Court order, the parties provided reciprocal disclosure of witness lists on September 28, 2018. Defendant gave notice that he intends to call one witness, Aref Al Zaben. The government has moved to preclude that witness on the basis that pursuant to defendant's offer of proof, the witness could only offer testimony that is irrelevant, is hearsay, or has already been precluded by the Court's order as to defendant's noticed defense of

public authority. The Court has ordered defendant to make a more detailed offer of proof by Monday, October 29.

The Court ordered also the parties to provide reciprocal notice of any expert testimony. Despite passage of the original deadline and a subsequent deadline months ago, to date, defendant has provided none. To the extent defendant attempts to introduce or call any expert testimony at trial, the United States reserves the right to object to such testimony and to seek to have such testimony precluded.

2. Exhibits

The government intends to offer approximately 500-600 documentary exhibits in its case in chief. This number is a small fraction of the many tens of thousands of highly relevant documents revealed by the investigation.

C. Discovery and Affirmative Defenses

The United States has also requested reciprocal discovery and Jencks material from defendant. To date, defendant has provided the government with a stack of documents that purportedly describe the SOI's criminal history. Defendant has not produced any other reciprocal discovery to which the United States is entitled under Rules 16 and 26.2 of the Federal Rules of Criminal Procedure or the Jencks Act. Thus, to the extent defendant attempts to introduce or use any documents at trial that he has not previously produced, the United States reserves the right to object and to seek to have such documents precluded. On October 22, 2018, the Court granted in part the Government's motion to preclude defendant from offering evidence or argument of the SOI's purported criminal convictions, thereby

precluding defendant from offering the aforementioned stack of documents as evidence at trial.

The government also requested notice of any affirmative defenses that defendant intends to raise, including entrapment, mental condition, and duress. Defendant notified the Government of his intent to pursue (1) an entrapment defense with respect to the charges in the original Indictment and (2) a public authority defense with respect to the charges in the FSI.

On June 21, 2018, the Court denied the Government's motion to preclude the entrapment defense and granted the Government's motion to preclude the public authority defense.

II. STATEMENT OF FACTS

The government expects that the evidence at trial will establish the following facts, among others:

A. Defendant's Initial Contacts with HSI

In May 2014, a Los Angeles supplier of military goods advised HSI that Defendant had contacted the supplier to solicit a business relationship. HSI conducted background investigation on Defendant and subsequently learned that an existing HSI SOI had worked with Defendant in the security-procurement business many years before.

In June 2014, at HSI's direction, the SOI re-established contact with Defendant via email and telephone. In July 2014, at HSI's direction, the SOI introduced Defendant by phone to the HSI UCA based in Los Angeles. During their initial phone conversation, which was recorded, Defendant said that he needed various weapons and other military equipment. The UCA told Defendant that he could help procure some of Ghanem's requested items, including sniper rifles and night-vision optics, but that the order would have to be "under the

table." Defendant affirmed that he wanted to proceed with the transaction and that he understood the risks involved, noting that he is also a U.S. citizen and is therefore "in the same boat."

The UCA sent Defendant pricing information for several military items that Defendant had requested in the phone call, including 200 US-made M-4 carbine assault rifles. In a subsequent recorded phone conversation in August 2014, Defendant and the UCA planned an in-person meeting in Greece in September 2014 to discuss business operations, including the outstanding order for M-4s as well as larger future orders. During that call, Defendant said that he had a strong market with Shi'a groups in Iran, Iraq, and Lebanon, and he again affirmed that he did not intend to apply for an export license and that the transaction would be "under the table."

B. First Meeting with the UCA

On September 18, 2014, Defendant met with the UCA and the SOI in Athens, Greece. During this meeting, which was recorded, Defendant advised that his network in Beirut, Lebanon, includes a contact that Ghamen believed was connected to the designated terrorist organization known as Hezbollah. Defendant also said that he had requirements for goods — including Bell helicopters and F-5 and F-14 military fighter jets — on behalf of Iranian customers that he did not identify. Defendant provided the UCA with documents partially written in Farsi (the official language of Iran) that addressed these requests.

During the meeting, at defendant's request, the parties agreed not to make future references to Iran, and to instead use the cover term "Ireland" when discussing Iran. Defendant made reference to his "black market" activities in the Eastern Block and stated that he

could get "anything" for the UCA from there. Defendant further reaffirmed his understanding of U.S. legal requirements for export licenses and end-user certificates, noting that he needed to be careful because he is a U.S. citizen. Defendant noted that he was dealing with Hezbollah in Iraq, and also that he had a weapons market in Africa.

At this meeting, Defendant said that he was looking for a particular sniper rifle that could cover a distance of 4500-5000 meters. He added that he was dealing with a small U.S. company, and that he was communicating with a person there who was willing to make as many of the rifles as Defendant required. Defendant clarified that they were discussing 500 pieces, and that the rifles would be custom made for him. Defendant said that his contact told him that "ITAR" was required and that the contact would not ship the items illegally. Defendant said that he would obtain cover documentation for that arms shipment from an Iraqi official, because this shipment was one area of business to cover "illegally."

Defendant and the UCA also discussed at the meeting Defendant's payment plans for their transaction. Defendant said that cash would not work, so he planned to use a bank wire to pay. He further noted that it was his standard practice to use a "cover" contract that would "change the items" detailed in the contract but give the correct price.

C. Discussions after the First Meeting

Shortly after the September 2014 meeting, Defendant e-mailed the UCA requesting an update on the status of the M-4 rifles that Defendant had requested. The UCA replied that the 500 M-4s would be available for delivery within days after Defendant secured funding.

In January 2015, Defendant called the UCA. In this recorded phone call, Defendant expressed reservations about working with the UCA, saying that it was important to know who he was dealing with, because "one mistake, and you lose what you built all your life." Defendant later said that he needed night-vision goggles for "MI-24," and the UCA responded that he would look into whether he could acquire this item. An Mi-24 is an attack helicopter manufactured in Russia. On this phone call, Defendant and the UCA also agreed to meet again in person.

D. Second Meeting with the UCA

In March 2015, Defendant again met with the UCA and the SOI in Athens, Greece, to discuss potential business. On March 10, 2015, Defendant met with the UCA and the SOI and discussed the UCA's ability to supply military goods, particularly night-vision goggles and other military optics. This meeting was recorded. The following day, the UCA sent Defendant an e-mail confirming the UCA's ability to supply Defendant with the requested goods. Specifically, the e-mail notes that Defendant expressed an interest in PVS-14 Night Vision Goggles, AN/AVS-9 Night Vision Goggles, PVS-27 Night Vision Sniper Scope manufactured by FLIR, and DBAL-A Infrared Illuminator

On March 11, 2015, Defendant engaged in multiple meetings with the UCA and the SOI to discuss volume and other sales and export logistical details of the military optical equipment requested by Defendant. Defendant and the UCA agreed that the equipment would be exported from the United States without a license. The UCA showed Defendant working models of night-vision goggles requested by Defendant. After inspecting the models, Defendant made two speakerphone calls to clients whom Defendant believed would be

interested in the equipment. One of the prospective buyers asked where Defendant could deliver the night-vision equipment, to which Defendant gleefully replied that he could deliver them to the buyer's "bedroom." Defendant advised the UCA that the prospective buyers were based in Ukraine. On March 12, 2015, Defendant called the UCA and told him that Defendant had received positive feedback on the military optical equipment from potential buyers in Egypt, Ukraine, and Greece. The UCA later sent Defendant four e-mails containing datasheets and pricing for each of the four items of optical equipment that they had discussed.

E. Defendant's Order with the UCA

1. Negotiations and Order Placement

On March 31, 2015, Defendant sent the UCA an e-mail entitled "Urgent requirement" requesting specific quantities of the military optical equipment discussed at the March 2015 meetings in Athens and inquiring as to the fastest time for delivery. After the UCA advised defendant of a timeline to procure and ship the requested military optics, Defendant sent another e-mail asking the UCA to send an invoice. On April 8, 2015, Defendant advised the UCA that Defendant had become ill and needed time to recover.

On May 12, 2015, Defendant sent the UCA an e-mail containing a screenshot of another e-mail entitled "URGENT REQUIREMENT OF AMMO." That e-mail listed several types of missiles, rockets, ammunition, and other munitions, including "Hell Fire Missile," "2.75 rocket," "Tow Missile (A and B)," and "hand grenades." Upon receiving this message, the UCA called Defendant. In this phone call, which was recorded, Defendant and the UCA discussed pricing and logistics for the military optical equipment that Defendant had previously

requested. Defendant referred to the e-mail he had sent to the UCA that day, noting "the list I gave you, which has that Hellfire, the whole list is very serious." Defendant added that he was "already supplying the buyer."

On July 24, 2015, Defendant sent the UCA a message requesting Barrett M82A1 .50 caliber sniper rifles, manufactured in the United States, and Steyr HS .50 caliber sniper rifles, manufactured in Austria. On July 27, 2015, Defendant sent the UCA another message asking to expand his order to include 100 US-made "pistols with silencer." Specifically, Defendant asked, "Also can you provide me with 100 pistols with silencer any good US even Gluck."[1]

On August 4, 2015, the UCA sent an e-mail to Defendant providing pricing information for 9mm pistols, 9mm pistol barrels, and silencers for 9mm pistols. On August 5, 2015, in a recorded phone conversation, Defendant acknowledged that email from the UCA about the pistols and asked the UCA to proceed with an order for 100 pistols. In the same phone call, Defendant also requested that the UCA procure on his behalf "at least 10 or 20" .50-caliber sniper rifles, as well as laser sights. Defendant further requested 50,000 rounds of 9mm ammunition. During this conversation, Defendant repeatedly asserted that he needed the requested items "ASAP" and "right away."

Later that same day, the UCA sent Defendant an e-mail with pricing information and financing terms for the 9mm pistol, barrels, silencers, and ammunition that Defendant had requested. On August 6,

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[1] At trial, the UCA will testify based on his knowledge, training, and experience, that he understood "Gluck" to refer to "Glock," a manufacturer of firearms.

Defendant called the UCA to discuss the contemplated order. During the call, which was recorded, Defendant requested "more advanced" sniper rifles, ultimately requesting five each of "basic," "medium," and "high-end" sniper rifles. Defendant also requested night vision scopes for the sniper rifles. Defendant further asked the UCA to falsely state on the export documents that the shipment contained juice. Defendant advised that he wanted the shipment to be routed through Greece with an ultimate destination of Libya. Defendant said that the money for the shipment would come from Jordan. On August 7, 2015, in an e-mail to the UCA, Defendant provided the name and contact information for his consignee in Libya.

On August 9, 2015, the UCA sent Defendant an e-mail with a full breakdown of Defendant's requested items, including quantities and pricing. Per Defendant's request, the various categories of military goods were coded as "juice." The grand total for Defendant's order at that stage was $408,000.

On August 26, 2015, Defendant replied to the UCA's e-mail requesting reductions to the quantity of each of the requested items. That same day, the UCA sent Defendant a message with his revised smaller order. The updated order, which Defendant ultimately placed, came to a total of $220,050 and included the following items:

Commodity	Manufacturer	Model Number	Quantity	Price Per Unit	Total
Pistol	Kahr Arms	TP9 9MM	40	$900.00	$36,000.00
Pistol	Kahr Arms	CW9 9MM	10	$650.00	$6,500.00
Barrel	Kahr Arms	Threaded Barrel	50	$210.00	$10,500.00
Suppressor	AAC	Evolution	50	$780.00	$39,000.00
Laser Sight	Crimson Trace	Laser Sight	50	$265.00	$13,250.00

Commodity	Manufacturer	Model Number	Quantity	Price Per Unit	Total
Ammunition	Remington	9MM Luger 115 Grain	50,000	$18,000.00	$18,000.00
Rifle	Barrett	M99 .50 CAL	5	$4,600.00	$23,000.00
Rifle	Barrett	M95 .50 CAL	3	$7,100.00	$21,300.00
Rifle	Barrett	82A1 .50 CAL	2	$9,600.00	$19,200.00
Ammunition	American Eagle	.50 CAL BMG-660 Grain	5,000	$16,000.00	$16,000.00
MUNS	FLIR	PVS-27	1	$10,500.00	$10,500.00
Night-Vision Goggle	ITT	PVS-14	2	$3,400.00	$6,800.00
				GRAND TOTAL	**$220,050.00**

The UCA advised that a 40% down payment of $88,020 was needed to place the order. Per Defendant's request, the UCA called Defendant that day to discuss the order. During this phone call, which was recorded, Defendant said that he was going to pay for the order from his own money because he was unable to reach his prospective customer. Defendant further advised that after this delivery, a "much bigger order" would come. Defendant also requested that instead of "juice," the weapons and other military items be invoiced as industrial generators. During the discussion of his intended bank transfer, Defendant alluded to the illicit nature of their transaction, noting, "we are not dealing with each other as [weapons manufacturer] Bushmaster and [the] Jordan Armed Forces." On August 26, 2015, after the phone call, the UCA sent Defendant an e-mail with an invoice detailing the sale of three types of US-origin industrial generators for a total price of $220,050. The invoice

listed Defendant's previously identified consignee in Libya as the purchaser. The invoice also included routing information for the UCA's undercover bank account in the Central District of California.

2. Payments and Shipment

On September 2, 2015, Defendant confirmed to the UCA, both by phone and by e-mail, that Defendant had wired $90,000 to the UCA's bank as a down payment on the order. The bank records for the UCA's undercover account show that a bank wire deposit in the amount of $89,971 posted on September 2, 2015. The sender of the wire was "GATEWAY TO MENA FOR LOGIS."

On October 19, 2015, Defendant spoke with the UCA in a recorded telephone call. Defendant said that he would wire the second installment of $90,000 to the UCA that week. Pursuant to the agreement between Defendant and the UCA, that second payment would trigger the UCA's obligation to ship Defendant's order from the Port of Los Angeles to Greece. On the same telephone call, Defendant committed to meet the UCA in Greece in late November or early December when the shipment arrived, in order to inspect the shipment before it was forwarded onward to Defendant's customer in Libya pursuant to the purchase agreement. The UCA warned Defendant that he would not ship the container to Libya until Defendant had personally inspected it, and Defendant agreed that he would definitely come to Greece to meet the UCA and inspect the shipment after its arrival.

On October 22, 2015, a second installment of $89,971 was wired to the UCA's undercover bank account from Defendant's company in Jordan. In late October 2015, HSI arranged for a shipping container ostensibly containing Defendant's order to leave the Port of Los Angeles on November 3, 2015.

F. Defendant's Arrest by the Hellenic National Police and the Seizure of His Digital Devices

On December 8, 2015, defendant and the UCA traveled to a warehouse near Athens, Greece, where the Hellenic National Police ("HNP") arrested defendant pursuant to a Mutual Legal Assistance Treaty request from U.S. officials.

During Defendant arrest, and later at Defendant's hotel room, the HNP seized from defendant the following six electronic media devices (the "digital devices"), among more than a dozen others:

1. One mobile phone, brand Samsung Galaxy S4 (the "S4");
2. One mobile phone, brand Apple iPhone (the "iPhone");
3. One mobile phone, brand Huawei (the "Huawei");
4. One mobile phone, brand Samsung Galaxy S6 (the "S6");
5. One tablet, brand Apple iPad (the "iPad");
6. One laptop computer, brand Apple MacBook (the "MacBook");

The HNP maintained custody and control of the digital devices until May 4, 2016, when HNP Lieutenant Zagakos Aristeidis hand delivered the digital devices to Tsakis Vasileios (also known as William Tzakis), a Foreign Service National Investigator at the U.S. Embassy in Athens.

On May 5, Investigator Tzakis sent the digital devices via United Parcel Service ("UPS") to HSI's office in Long Beach, California. On or about May 9, 2016, HSI personnel received those digital devices from UPS and checked them into a secure area at the Long Beach office.

G. The Forensic Examination of Defendant's Digital Devices

The parties have entered and filed a stipulation as to the following information. On or about May 20, 2016, HSI SA Matthew

Peterson retrieved the MacBook, the iPad, the S4 and the S6 from the secure evidence storage area and provided them to HSI forensic analysts for extraction.

1. The MacBook

Using Tableau write blocker and FTK Imager, both of which are computer forensic tools used for the acquisition of digital devices, CFA G. Kwan acquired a forensic image of the MacBook, which he provided to SA Peterson.

A forensic image is a bit-by-bit, sector-by-sector direct copy of a physical storage device. Forensic images include all of the files visible to the operating system, which are said to exist in "allocated space," as well as deleted files and pieces of files left in the slack and free space, which is referred to as "unallocated space."

Thereafter, SA Peterson used EnCase, which is a forensic program used to analyze data from image files, to review the MacBook image and to create a bookmarked report of the files he decided to seize. SA Peterson saved a copy of that report to an HSI computer server, where it remains available to review, download, and print.

2. The iPad, S4, and S6

CFA G. Kwan used Cellebrite, which is a forensic program for mobile devices, to extract images, contacts, call logs, messages, and device locations from the iPad, S4, and S6. CFA G. Kwan provided those files to SA Peterson for further review.

SA Peterson used Cellebrite to review the files and to create bookmarked reports of the files he decided to seize. SA Peterson saved copies of those reports to an HSI server.

On or about April 6, 2017, SA Peterson provided the iPhone and the Huawei to HSI CFA Aaron Kwon ("A. Kwon"):

On or before April 10, 2017, CFA A. Kwon used Cellebrite to extract images, contacts, call logs, messages, and device locations from iPhone and Huawei. CFA A. Kwon provided those files to SA Peterson for further review.

SA Peterson used Cellebrite to review the files and to create bookmarked reports of the files he decided to seize. SA Peterson saved copies of those reports to an HSI server.

H. Defendant's Other Charged Illegal Arms-Trafficking Activities

From SA Peterson's review of the contents of the digital devices, as well as from other investigation including review of e-mail search warrant returns and wire transfer records, he learned about defendant's involvement in other arms-trafficking activities as charged in Counts Five and Six of the Trial Indictment.

The government intends to focus its presentation as to these charges on evidence of specific transactions alleged in Counts Five and Six, including defendant's efforts to broker and transfer anti-aircraft missiles between 2013 and 2015 (summarized below); and defendant's brokering and transferring of the services of mercenaries to operate Igla and Quadrat surface-to-air missiles (summarized below). This presentation will also show the chronology of defendant's efforts to broker and transfer large quantities of weapons and ammunition to a militant faction competing for control of the government of Libya in 2014 and 2015. Evidence of this transaction includes transmittal of an end-user certificate ("EUC") numbered 8628-57 for munitions (including 5,000,000 rounds each of

23-millimeter, 14.5-millimeter, and 7.62x54 ammunition, 10,000 GRAD 122-millimeter rockets, 3,000,000 rounds of 12.7-millimeter ammunition, 150 Konkurs anti-tank missile launchers, 1500 Konkurs anti-tank missiles, and numerous other defense articles) and bearing defendant's name as the supplier, as well as defendant's and his co-conspirators' communications reflecting their negotiation of this deal. The evidence also includes a contract, referencing the above-described EUC numbered 8628-57 and bearing defendant's and his co-conspirators' signatures, for over $249 million in those weapons and ammunition, including the same above-described quantities of heavy ammunition and weapons listed on the EUC.

The government will also present selected evidence of defendant's efforts to transfer the numerous other military articles and services as alleged in Counts Five and Six of the Trial Indictment. This evidence largely draws from the large volume of communications among defendant and his co-conspirators reflecting their negotiations on these proposed deals, as well as from wire transfer records.

I. The Conspiracy to Use Missile Systems

From SA Peterson's review of the contents of the digital devices, he learned about defendant's involvement in a conspiracy to use and to transfer missile systems, as detailed below.

From approximately late 2014 until the time of his arrest, defendant, along with Mohammed Al-Daboubi, a former general in the Jordanian Air Force, operated a Jordan-based arms trafficking business called Gateway to MENA.

Between February 2015 and June 2015, defendant and Al-Daboubi worked to procure the services of Igla missile system operators to

fight in Libya.[2] Defendant simultaneously endeavored to procure the services of Quadrat surface-to-air missile operators and specialists. Defendant negotiated with the suppliers of these services, David Shikhashvili and Sandro Kavsadze, to pay each Igla operator $10,000 for two months on duty in Libya and offered the operators a bonus of $50,000 and an early release from duty if they managed to shoot down an aircraft. Defendant and Al-Daboubi also arranged for the operators to travel to Libya. The two Igla operators, Devidze and Partsakhashvili, along with Kavsadze, traveled to Libya on or around April 30, 2015, and written communications among the parties confirm that they were on duty there in May 2015.

The evidence as to this transaction includes communications reflecting defendant's negotiation of the terms of the deal, including salary and length of service; his payment of $20,000 for the services of the Igla operators and $50,000 for the services of the Quadrat operators and specialists; his offer of a bonus of $50,000 to the Igla operators if they were successful in their mission of shooting down a jet; and his facilitation of the Igla operators' travel to Libya in late April 2015. The evidence further includes the video-recorded testimony of Kavsadze, Devidze, and

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[2] Dr. Robert Doherty will testify at trial that the 9K38 Igla is a Russian man-portable infrared homing surface-to-air missile system. The purpose of this system is to destroy aircraft. In their negotiations and arrangements for Igla operators, defendant and his co-conspirators typically refer to the system simply as "Igla," but defendant has in the course of a prior transaction referred to it as "Igla 9K38 + missiles." The Igla surface-to-air missile system has previously been charged, and upheld, as a "missile system designed to destroy aircraft" pursuant to 18 U.S.C. § 2332g. See United States v. Bout, 731 F.3d 233 (2d Cir. 2013) (affirming 18 U.S.C. § 2332g conviction based on conspiracy to acquire and use Igla surface-to-air missile systems).

Partsakhashvili, which the Court permitted the parties to take and to use at trial pursuant to Rule 15.

J. The Conspiracy to Transfer Missile Systems

In addition to the aforementioned conspiracy to use missile systems designed to destroy aircraft, defendant also conspired with multiple individuals to transfer such systems in violation of 18 U.S.C. § 2332g. The evidence of this conspiracy will include communications reflecting defendant's efforts between 2013 and 2015 to procure an S-400 Triumph anti-aircraft missile system from the Russian government on behalf of the royal family of Saudi Arabia. It will also include communications, offer letters, and EUCs reflecting defendant's efforts to broker and transfer Igla and Strela[3] surface-to-air missile systems to a variety of countries, including Libya, the United Arab Emirates, Iraq, and Saudi Arabia.

III. THE ELEMENTS OF THE CHARGED OFFENSES

A. Count 1: Attempted Exportation of Defense Articles Without A License

1. The Statutory Framework

The relevant provisions of the Arms Export Control Act ("AECA") are codified at Title 22, United States Code, Section 2778(b)(2) and (c). Specifically, § 2778(b)(2) provides:

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[3] Dr. Robert Doherty will testify at trial that the Strela is a Soviet-designed surface-to-air missile system that preceded the Igla. The purpose of the Strela system is to destroy aircraft. There have been several design updates to the first-generation 9K31 Strela 1M system, but the missiles used are interchangeable among them. In an offer letter, defendant referenced the launchers only as "Strela" and the missiles as "Strela Missiles." The Strela has been previously charged, and upheld, as a "missile system designed to destroy aircraft" pursuant to 18 U.S.C. § 2332g. See United States v. Hammadi, 737 F.3d 1043 (6th Cir. 2013) (affirming conviction based on conspiracy to transfer Strela surface-to-air missile systems).

> Except as otherwise specifically provided in regulations issued under subsection (a)(1) of this section, no defense articles or defense services designated by the President under subsection (a)(1) of this section may be exported or imported without a license for such export or import, issued in accordance with this chapter and regulations issued under this chapter, except that no license shall be required for exports or imports made by or for an agency of the United States Government (A) for official use by a department or agency of the United States Government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.
>
> Section 2778(c) provides:
>
> Any person who willfully violates any provision of this section . . . or any rule or regulation issued under this section . . . , shall upon conviction be fined for each violation not more than $1,000,000 or imprisoned not more than 20 years, or both.

The items or categories of items that are defense articles and defense services subject to export control have been delegated by the President to the Secretary of State with the concurrence of the Secretary of Defense. E.g., E.O. 13637, Sec. 1(n)(i) (Mar. 8, 2013). The list of items and categories of items designated as defense articles and defense services resides in the United States Munitions List ("USML"), which is set forth in the International Traffic in Arms Regulations ("ITAR") at 22 C.F.R. § 121.1.

The regulations promulgated under the authority of AECA follow its provisions regarding the requirement for a license. 22 C.F.R. § 123.1(a) provides that "[a]ny person who intends to export . . . a defense article must obtain the approval of the Directorate of Defense Trade Controls prior to the export." 22 C.F.R. § 127.1(a)(1) provides that "[w]ithout first obtaining the required license or other written approval from the Directorate of Defense Trade Controls, it is unlawful . . . [t]o export or attempt to export from the United States any defense article or technical data . . . for

which a license or written approval is required." 22 C.F.R. § 127.1(a)(1) (emphasis added).

2. Elements of the Crime of Attempted Exportation of a Defense Article without a License

Count One of the Trial Indictment charges defendant with attempting to cause the export from the United States of a defense article without a license. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, defendant intended to willfully cause another person to export from the United States of an article designated in the United States Munitions List ("USML") - a "defense article" - without a license or other written authorization issued by the State Department; and

Second, defendant did something that was a substantial step toward willfully causing another person to export from the United States an article designated in the USML without a license or other written authorization issued by the State Department.

B. Count 2: Smuggling

1. The Statutory Framework

The text of 18 U.S.C. § 554 is as follows:

> Whoever fraudulently or knowingly exports or sends from the United States, or attempts to export or send from the United States, any merchandise, article, or object contrary to any law or regulation of the United States, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise, article or object, prior to exportation, knowing the same to be intended for exportation contrary to any law or regulation of the United States, shall be fined under this title, imprisoned not more than 10 years, or both.

2. Elements of the Crime of Smuggling

The elements of the crime of smuggling are as follows:

First, defendant knowingly received, concealed, bought, or sold merchandise, articles, and objects, or in any manner facilitated the transportation, concealment, or sale of such merchandise, articles, and objects, prior to exportation; and

Second, at that time, defendant knew the merchandise, articles, and objects to be intended for exportation contrary to any law or regulation of the United States.

C. Counts Three and Four: Money Laundering

1. The Statutory Framework

The text of 18 U.S.C. § 1956(a)(2)(A) provides:

> Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States — (A) with the intent to promote the carrying on of specified unlawful activity. . . shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both.

18 U.S.C. § 1956(a)(2)(A).

2. Elements of the Crime

The elements of the crime of money laundering are as follows:

First, defendant transported money to a place in the United States from or through place outside the United States; and

Second, defendant acted with the intent to promote the carrying on of a specified unlawful activity, namely, smuggling or exporting of defense articles without a license in violation of AECA and the ITAR.

D. Count Five: Conspiracy

1. The Statutory Scheme

The text of 18 U.S.C. § 371 provides, in pertinent part:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. § 371.

2. Elements of the Crime

The elements of the crime of conspiracy are as follows:

First, beginning on a date unknown, but no later than September 4, 2013, there was an agreement between two or more persons to commit at least one crime as charged in the Trial Indictment;

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and,

Third, one of the members of the conspiracy performed at least one overt act on or after September 4, 2013, for the purpose of carrying out the conspiracy.

E. Count Six: Brokering Defense Articles and Services Without a License

1. The Statutory Framework

At the time of the offense conduct, AECA imposed registration and licensing requirements on U.S. persons who engage in "brokering activities with respect to the manufacture, export, import, or transfer of any defense article or defense service" and who are "in the business of brokering activities with respect to the manufacture, export, import, or transfer of any foreign defense article or defense

service." 18 U.S.C. § 2778(b)(1)(A)(ii)(I)-(IV). "Brokering activities" meant any action on behalf of another to facilitate the manufacture, export, permanent import, transfer, re-export, re-transfer, or furnishing of a U.S. or foreign defense article or U.S. or foreign defense service, regardless of its origin." 22 C.F.R § 129.2. A "broker" meant any person (including a natural person, corporation, business association, partnership, society, trust, or any other entity, organization, or group) engaged in the business of brokering activities and who was: (a) a U.S. person, wherever located; (b) a foreign person located in the United States; or (c) a foreign person located outside the United States where the foreign person is owned or controlled by a U.S. person. 22 C.F.R. § 129.2.

2. Elements of the Crime

The elements of the crime of brokering defense articles and defense services without a license are as follows:

First, defendant engaged in the business of brokering activities with respect to the export or transfer of an article or service;

Second, the article or service was designated in the USML;

Third, the defendant engaged in such brokering activities without first registering with or obtaining a license or other written authorization from the Secretary of State; and

Fourth, the defendant acted willfully.

F. Count Seven: Conspiracy to Use and to Transfer a Missile System Designed to Destroy Aircraft

1. The Statutory Framework

The text of 18 U.S.C. § 2332g provides, in pertinent part, as follows:

(1) In general.--Except as provided in paragraph (3), it shall be unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use--

(A) an explosive or incendiary rocket or missile that is guided by any system designed to enable the rocket or missile to—

(i) seek or proceed toward energy radiated or reflected from an aircraft or toward an image locating an aircraft; or

(ii) otherwise direct or guide the rocket or missile to an aircraft;

(B) any device designed or intended to launch or guide a rocket or missile described in subparagraph (A); or

(C) any part or combination of parts designed or redesigned for use in assembling or fabricating a rocket, missile, or device described in subparagraph (A) or (B).

. . . .

(b) Jurisdiction.--Conduct prohibited by subsection (a) is within the jurisdiction of the United States if--

. . . .

(2) the offense occurs outside of the United States and is committed by a national of the United States;

. . . .

(c) Criminal penalties.--

(1) In general.--Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than $2,000,000 and shall be sentenced to a term of imprisonment not less than 25 years or to imprisonment for life.

2. Elements of the Crime

The elements of the crime of conspiring to use and to transfer missile systems designed to destroy aircraft are as follows:

First, beginning on a date unknown, but no later than September 9, 2013, there was an agreement between two or more persons to use or to transfer a missile system designed to destroy aircraft;

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and

Third, one of the members of the conspiracy performed at least one overt act on or after September 9, 2013 for the purpose of carrying out the conspiracy.

The elements of transferring or using missile systems designed to destroy aircraft are as follows:

First, a member of the conspiracy was a national of the United States; and

Second, it was a purpose of the conspiracy to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use any of the following: (1) an explosive or incendiary rocket or missile that is guided by any system designed to enable the rocket or missile to seek or proceed toward energy radiated or reflected from an aircraft toward an image locating an aircraft or otherwise direct or guide the rocket or missile to an aircraft; (2) any device designed or intended to launch or guide such a rocket or missile; or (3) any part or combination of parts designed or redesigned for use in assembling or fabricating such a rocket, missile, or device.

IV. EVIDENTIARY AND LEGAL ISSUES

A. Judicial Notice

The Government has requested judicial notice of the following fact:

> On April 5, 2017, defendant was detained and first brought before a United States Magistrate Judge in Los Angeles, California, in the Central District of California, to be arraigned on Counts One through Three of the First Superseding Indictment ("FSI"), which charges now appear as Counts Five through Seven of the Trial Indictment.

As detailed in the Government Request for Judicial Notice (Dkt. 319), upon which the Court has not yet ruled, this fact is subject to judicial notice and is relevant to establishing that venue is proper in this district.

B. Expert Testimony

1. The International Trade in Arms and Munitions

To aid the jury in understanding the evidence that will be presented, which will largely consist of communications among defendant and co-conspirators regarding the brokering, export, transfer, and sale of weapons, ammunition, other munitions, and mercenary services, the government will offer limited expert testimony by HSI Special Agent Matthew Peterson to educate the jury as to the international market for arms and the business patterns and practices commonly employed by those involved in it. This testimony may include the fact that many countries require end-user certificates (EUCs) and other official documentation for transactions involving arms originating therein; the black market for such EUCs and other documents, and the common practice of forging, creating, or altering such documentation; the common use of coded language and coded cover documentation by black-market arms traffickers, and typical examples of such codes; the diverse methods of communication typically employed among those in the network of international black-market arms traffickers; the fact that black-market arms brokers often serve as middlemen, buying or selling depending on the needs

and stocks of suppliers and customers; typical pricing structures in the black market for various arms; the common practice of marketing defense articles and services in conflict-afflicted areas where demand is high and profit margins are substantial; the vernacular and methods of communication commonly used in the trade; processes and practices required by the U.S. government in the weapons trade; and other related areas. SA Peterson may also testify as to the structure of governmental and non-governmental arms-procurement networks, and as to his knowledge of certain prominent individuals in those roles.

SA Peterson will also testify about various types of weapons and their nomenclature and characteristics, including but not limited to pistols, rifles, assault rifles, machine guns, and other firearms; small arms ammunition; rockets, mortars, missiles, and launchers; anti-tank weapons; artillery; and anti-aircraft systems. He may also testify about the nomenclature for and characteristics of various other types of military equipment, including optical equipment; assault, cargo and transport aircraft; tanks; armored personnel carriers; and vehicles. SA Peterson's testimony will be based on his training, education, and military and work experience, including his experience working on numerous weapons-proliferation investigations.

The government has provided notice of the above-described areas of anticipated testimony by SA Peterson, and defendant did not raise any objections to this evidence by the Court-ordered deadline or at any other time. Because SA Peterson will also testify as a lay witness about percipient facts relevant to the investigation, the government will request that the Court read an appropriate dual-role testimony instruction to the jury immediately prior to his testimony

as well as at the end of the case. See Ninth Circuit Model Criminal Jury Instruction 4.14; see also United States v. Vera, 770 F.3d 1232, 1246 (9th Cir. 2014). The government will provide this requested instruction in its proposed jury instructions.

2. USML Status of Charged Defense Articles and Services

The USML, contained in regulations promulgated by DOS pursuant to the AECA, 22 U.S.C. § 2778 "consists of categories of defense articles that cannot be imported or exported without a license." United States v. Fu Chin Chung, 931 F.2d 43, 45 (11th Cir. 1991) (per curiam); see 22 C.F.R. § 121.1. "To sustain a conviction under 22 U.S.C. § 2778, the government must prove beyond a reasonable doubt that the defendant willfully exported or attempted to export defense articles that are on the United States Munitions List without a license." United States v. Castro-Trevino, 464 F.3d 536, 543 n. 14 (5th Cir. 2006)(quotation marks and citation omitted). The government must therefore prove that the defense article was on the USML at the time of the alleged conduct.

Courts of appeals, including the Ninth Circuit, have sustained convictions for AECA violations where the government submitted at trial, in order to meet that burden, a certification from the U.S. State Department that the article at issue was, in fact, on the USML. United States v. Chi Mak, 683 F.3d 1126, 1140 (2012) (sustaining conviction based on U.S. State Department certification that documents were technical data on the USML); United States v. Piquet, 372 Fed. Appx. 4, 5 (2010) (unpublished) (same).

The recent trend, however, is for the government to present expert and/or lay testimony concerning both the applicable USML categories and the specifications of the articles at issue that

establish that they are on that list. See, e.g., United States v. Burden, 217 F. Supp. 3d 348, 351-52 (D.D.C. 2016) (denying motion for judgment of acquittal; DDTC employee testified that certain items constituted defense articles).

This trend addresses concerns raised by some courts that removing from the jury the question of whether the item at issue fell under the Munitions List based on the State Department's after-the-fact determinations may violate defendant's right to a jury finding on each essential element of the crime. See, e.g., United States v. Zhen Zhou Wu, 711 F.3d 1 (2013) (vacating convictions on that ground); United States v. Pulungan, 569 F.3d 326, 328 (7th Cir. 2009) (reversing conviction; citing concern that DDTC's "claim of authority to classify any item as a 'defense article,' without revealing the basis of the decision and without allowing any inquiry by the jury, would create serious constitutional problems.").

3. Missile Systems Designed to Destroy Aircraft

To make a conviction decision on Count Three of the FSI, the jury must decide whether various weapons systems that the government alleges defendant conspired to transfer and to use met the following definition:

(A) an explosive or incendiary rocket or missile that is guided by any system designed to enable the rocket or missile to--

(i) seek or proceed toward energy radiated or reflected from an aircraft or toward an image locating an aircraft; or

(ii) otherwise direct or guide the rocket or missile to an aircraft;

(B) any device designed or intended to launch or guide a rocket or missile described in subparagraph (A); or

(C) any part or combination of parts designed or redesigned for use in assembling or fabricating a rocket, missile, or device described in subparagraph (A) or (B).

To aid the jury in making this determination as to each relevant weapons system, the government will call Dr. Robert Doherty. Dr. Doherty has decades of experience in the scientific and intelligence analysis of anti-aircraft missile systems, with a specific focus on Soviet and Russian surface-to-air missile systems. Dr. Doherty will testify as to his familiarity with various anti-aircraft missile systems, including the following: Igla, Strela, S-400 Triumph, S-300, S-200, S-75, Grom, Osa, Pechora, Quadrat/Kvadrat, Tunguska, and Buk. This testimony may include descriptions of the design, engineering, capabilities, limitations, modifications, and methods of employment of each system; the NATO and other designators and alternative nomenclatures therefor; variants of and precursors to each system; the availability, proliferation, and typical pricing of each system; the processes by which systems are negotiated and distributed; the methods by which individual systems are operated, maintained, serviced, and checked for functionality; and the deployment of these systems in the field. Dr. Doherty's testimony may also include a detailed explanation of the precise mechanism by which each system is employed, as well as a description of the training required to effectively use, maintain, and repair each system. Dr. Doherty may also testify about the production and distribution of various anti-aircraft weapons systems by and to various countries and regions, and specifically about efforts by countries, including Saudi Arabia, to obtain the S-400 missile system. He may further testify as to the country of origin of each

system, as well as specific countries that are known for production, modification, and/or supply of surface-to-air missiles.

Dr. Doherty will testify that certain anti-aircraft missile systems, including Igla, Strela, S-400 Triumph, Grom, Osa, Pechora, and quadrat systems, among others, use explosive or incendiary rockets or missiles guided by systems designed to enable the rocket or missile to seek or proceed toward energy radiated or reflected from an aircraft or toward an image locating an aircraft, or to otherwise direct or guide the rocket or missile to an aircraft. He will further testify that these systems employ devices designed or intended to launch or guide a rocket or missile toward an aircraft.

Drawing from his knowledge of the geographic proliferation of anti-aircraft missile systems, Dr. Doherty may testify about the acquisition of various anti-aircraft missile systems — including Igla and Strela systems — by the Gaddafi regime in Libya and the presence and deployment of some such systems in post-Qaddafi Libya. His testimony may also describe the common employment of Toyota Hilux trucks as a vehicle of choice for mounting certain heavy weapons systems, including anti-aircraft missile systems.

Dr. Doherty may also testify as to his knowledge of air defense production facilities and training regimes in the militaries of various countries, including the Soviet Union, the Russian Federation, and other former Soviet republics. Drawing from that knowledge, he may testify as to his familiarity with Soviet and Russian air defense production and training facilities, as well as the state-sponsored export program for military articles.

4. Other Potential Experts

The government has noticed other experts, including linguists, in the event stipulations as to undisputed facts are not reached.

C. Hearsay

Federal Rule of Evidence 801(c) defines "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Fed. R. Evid. 801(c); United States v. Cowley, 720 F.2d 1037, 1044 (9th Cir. 1983). A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person if it is intended to be an assertion. See Fed. R. Evid. 801(a). Hearsay is admissible as substantive evidence only as provided by the Federal Rules of Evidence. See Fed. R. Evid. 802, 803, 804, 807; United States v. Tafollo-Cardenas, 897 F.2d 976, 979 (9th Cir. 1990).

1. Certified Business Records of Bank Transactions and Defendant's Custodial Location

The government intends to introduce certified records of business activities made and kept in the regularly course of the business of the Clearing House Interbank Payments System ("CHIPS" and the "CHIPS Business Records"), which is a United States private clearinghouse for large-value transactions.

On October 22, 2018, the Court granted the government's motion in limine requesting a a pre-trial ruling that (1) the CHIPS Business Records are self-authenticating under Federal Rule of Evidence 902 as certified domestic records of a regularly conducted activity, and that the Government need not call the CHIPS custodian of records to testify at trial, and (2) those records are otherwise admissible

under well-established exceptions to the hearsay rule, including Federal Rule of 803(6) (Records of a Regularly Conducted Activity).

2. Certified Public Records of the Bureau of Prisons

The government also intends to introduce United States Bureau of Prisons ("BOP") Inmate History Records (the "BOP Records"). Documents that are self-authenticating public records under Rule 902(4) are admissible under Rule 803(8). Rule 902(4) provides for the self-authentication of:

> A copy of an official record . . . if the copy is certified as correct by: (A) the custodian or another person authorized to make the certification; or (B) a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a rule prescribed by the Supreme Court.

Fed. R. Evid. 902(4).

Here, the Certificate of Record attached to the BOP Records identifies its signer as the official custodian of the records of the Metropolitan Detention Center - Los Angeles ("MDC-LA") and the certified record as "SENTRY Printout of 'ARS' INMATE HISTORY[] (1 page)." This certificate suffices to authenticate the BOP Records under Rule 902(4)(A). The BOP Records and the Certificate of Record are attached hereto as Exhibit C.

Although hearsay is generally inadmissible, Federal Rule of Evidence 803(8)(A)(i) establishes an exception for, in pertinent part, "[a] record or statement of a public office if . . . it sets out . . . the office's activities." Here, the essential function or activity of the MDC-LA is to detain federal prisoners. That activity is recorded in the BOP Records, which show defendant's location throughout his time in federal custody. See United States v. Weiland, 420 F.3d 1062, 1074 (9th Cir. 2005) (holding that records contained in "penitentiary packet" were self-authenticating public

records under Rules 902(4) and 902(2) and in admissible pursuant to the hearsay exception in Rule 803(8)).

3. Defendant's Statements

The government intends to admit statements made by defendant, including in recorded conversations and e-mail and text message communications. Statements by a party opponent when offered against that party are excluded from the hearsay definition. See Fed. R. Evid. 801(d)(2)(A). Thus, defendant's statements may be admitted against him. Statements not offered for their truth, but to provide context for what the defendant has said, such as the statements of the SOI and the UC, are not hearsay. See United States v. Whitman, 771 F.2d 1348, 1352 (9th Cir. 1985) (upholding admission of recorded conversations between government informant and the defendant's co-conspirator, as the "statements were not admitted for their truth but to enable the jury to understand the [co-conspirator's] taped statements"). The admission of non-hearsay statements generally does not violate the Confrontation Clause. See Tennessee v. Street, 471 U.S. 409, 414 (1985) (noting that nonhearsay "raises no Confrontation Clause concerns").

When the government offers some of a defendant's prior statements, the door is not thereby opened to the defendant to put in all of her out-of-court statements because, because, when offered by the defendant, the statements are hearsay. See Fed. R. Evid. 801(d)(2); United States v. Burreson, 643 F.2d 1344, 1349 (9th Cir. 1981). Accordingly, exculpatory statements made by a defendant are hearsay and are not admissible at trial, when offered by the defendant. See Fed. R. Evid. 801(d), 802; United States v. Ortega, 203 F.3d 675, 682 (9th Cir. 2000).

The only recognized limitation of this principle is the "doctrine of completeness," which has been applied by some courts to admit additional portions of a defendant's prior statements where necessary to explain an admitted statement, place it in context, or avoid misleading the trier of fact. See Fed. R. Evid. 106; Burreson, 643 F.2d at 1349. However, the completeness doctrine does not require introduction of portions of a statement that are neither explanatory of, nor relevant to, the admitted passages. See United States v. Mitchell, 502 F.3d 931, 965 (9th Cir. 2007); United States v. Collicott, 92 F.3d 973, 983 (9th Cir. 1996) (holding that Federal Rule of Evidence 106 does not compel admission of otherwise inadmissible hearsay evidence); see also United States v. Lopez-Figueroa, 316 F. App'x 548, 550 (9th Cir. 2008) (defendant could not introduce own statements redacted from confession by government). As the Ninth Circuit has recognized, "it is often perfectly proper to admit segments . . . without including everything, and adverse parties are not entitled to offer additional segments just because they are there and the proponent has not offered them." Collicott, 92 F.3d at 983.

4. Co-Conspirator Statements

The government also intends to admit statements made by defendant's unindicted co-conspirators, including in e-mail and text message communications. The Federal Rules of Evidence define as non-hearsay any "statement [that] is offered against an opposing party and . . . was made by the party's coconspirator during and in

furtherance of the conspiracy."[4] Fed. R. Evid. 801(d)(2)(E). The admission of co-conspirator statements requires only that: "(1) there was a conspiracy, (2) the defendant and the declarant were participants in the conspiracy, and (3) the statement was made by the declarant during and in furtherance of the conspiracy." United States v. Bridgeforth, 441 F.3d 864, 869 (9th Cir. 2006).

Regarding the first factor - the existence of the conspiracy - "[t]he question is merely whether there was proof of a sufficient concert of action to show the individuals have been engaged in a joint venture." United States v. Lloyd, 807 F.3d 1128, 1161 (9th Cir. 2015).

Regarding the second factor - that the defendant and declarant were participants in the conspiracy - only slight evidence is necessary to connect a coconspirator to the conspiracy. The required quantum of proof is minimal. See United States v. Perez, 658 F.2d 654, 658 (9th Cir. 1981). "[P]articipation as an aider and abetter is sufficient" to establish the requisite connection to the conspiracy, and a declarant need not be charged alongside the defendant or even convicted of conspiracy to admit the declarant's statements under the co-conspirator exception. See United States v. Protac, Inc., 869 F.2d 1288, 1294 (9th Cir. 1989).

Regarding the third factor - that the statement was made in furtherance of the conspiracy - the scope of statements considered to

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[4] It bears mention that "[t]he requirements for admission of a co-conspirator's statement under Federal Rule of Evidence 801(d)(2)(E) are identical to the requirements of the Confrontation Clause. Therefore, if a statement is admissible under Rule 801(d)(2)(E), the defendant's right of confrontation is not violated." United States v. Bridgeforth, 441 F.3d 864, 868-69 (9th Cir. 2006) (citation omitted).

be in furtherance of the conspiracy is quite broad. It includes statements made to induce or enlist further participation in the group's activities, prompt further action on the part of conspirators, reassure members of a conspiracy's continued existence, allay a co-conspirator's fears, and keep co-conspirators abreast of ongoing activities. See United States v. Arias-Villanueva, 998 F.2d 1491, 1502 (9th Cir. 1993), overruled on other grounds by United States v. Jimenez-Ortega, 472 F.3d 1102 (9th Cir. 2007); United States v. Yarborough, 852 F.2d 1522, 1535-36 (9th Cir. 1988); United States v. Layton, 720 F.2d 548, 557 (9th Cir. 1983), overruled on other grounds by United States v. W.R. Grace, 526 F.3d 499, 506 (9th Cir. 2008) (en banc).[5] Bragging, boasts, and other comments designed to obtain confidence fall within the exception, United States v. Lechuga, 888 F.2d 1472, 1480 (5th Cir. 1989); United States v. Santiago, 837 F.2d 1545, 1549 (11th Cir. 1988). So, too, do statements that "identify the coconspirators" or "discuss a coconspirator's role in the conspiracy." Meeks, 756 F.3d at 1119. In determining whether a statement was made in furtherance of a

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[5] Many circuit courts have recognized that the "in furtherance" requirement is to be construed broadly. See, e.g., United States v. Meeks, 756 F.3d 1115, 1119 (8th Cir. 2014) ("[W]e interpret the phrase in furtherance of the conspiracy broadly."); United States v. Duka, 671 F.3d 329, 348 (3d Cir. 2011) ("The threshold for establishing that a statement was made in furtherance of a conspiracy is not high: the in furtherance of requirement is usually given a broad interpretation." (internal alteration and quotation marks omitted)); United States v. Hynes, 467 F.3d 951, 970 (6th Cir. 2006) ("[T]his court has broadly construed the requirement that statements between coconspirators be 'in furtherance' of the conspiracy . . . ."); United States v. Smith, 441 F.3d 254, 262 (4th Cir. 2006) ("Most courts, including the Fourth Circuit, construe the in furtherance of requirement so broadly that even causal relationships to the conspiracy suffice to satisfy the exception." (internal quotation marks omitted)); United States v. Limones, 8 F.3d 1004, 1008 (5th Cir. 1993) ("[T]he term 'in furtherance' of a conspiracy is broadly construed . . . .").

conspiracy, what matters is the declarant's intent in making the statement, not the statement's effect. See United States v. Nazemian, 948 F.2d 522, 529 (9th Cir. 1991); United States v. Zavala-Serra, 853 F.2d 1512, 1516 (9th Cir. 1988).

The government need only establish those foundational facts by a preponderance of the evidence. See Bourjaily v. United States, 483 U.S. 171, 176 (1987). Because co-conspirator statements fall within a "firmly rooted hearsay exception" that is "steeped in our jurisprudence," once foundational facts are established, "a court need not independently inquire into the reliability of such statements." Id. at 182-83.

"It is well established" that Rule 801(d)(2)(E) "is to be construed broadly in favor of admissibility." United States v. McMurray, 34 F.3d 1405, 1412 (8th Cir. 1994). Although a co-conspirator's statement alone is not enough to establish that it qualifies for admission under Rule 801(d)(2)(E), a court may consider the statement itself in evaluating its admissibility, United States v. Gordon, 844 F.2d 1397, 1402 (9th Cir. 1988), and the burden to introduce extrinsic evidence supporting admissibility is not a heavy one, United States v. Castaneda, 16 F.3d 1504, 1507 (9th Cir. 1994).

D. Physical Evidence

The Government will seek to admit physical evidence of Defendant's crimes seized from Defendant on December 15, 2015, namely, the Digital Devices. The test of admissibility of physical objects connected with the commission of a crime requires a showing that the object is in substantially the same condition as when the crime was committed (or the object seized). See United States v. Kaiser, 660 F.2d 724, 733 (9th Cir. 1981) (affirming district court's

admission of physical exhibit), overruled on other grounds by United States v. De Bright, 730 F.2d 1255, 1259 (9th Cir. 1984) (en banc). Factors to be considered are the nature of the article, the circumstances surrounding its preservation and custody and the likelihood of intermediaries tampering with it. See id. There is, however, a presumption of regularity in the handling of exhibits by public officials. See id.

If the district courts finds that there is a reasonable possibility that the piece of evidence has not changed in a material way, the Court has discretion to admit the evidence. See United States v. Harrington, 923 F.2d 1371, 1374 (9th Cir. 1991) (affirming trial's admission of items into evidence). Factors the court may consider in making this determination include the nature of the item, the circumstances surrounding its preservation, and the likelihood of intermeddlers having tampered with it. See Gallego v. United States, 276 F.2d 914, 917 (9th Cir. 1960) (same).

"There is no rule requiring the prosecution to produce as witnesses all persons who were in a position to come into contact with the article sought to be introduced in evidence." Gallego, 276 F.2d at 917. Gaps or defects in the chain of custody go to the weight of the evidence rather than its admissibility. See United States v. Matta-Ballesteros, 71 F.3d 754, 769-70 (9th Cir. 1995) (affirming district court's admission of audiotape recordings into evidence).

E. Authentication and Identification

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by "evidence sufficient to support a finding that the item is what the proponent

claims it is." Fed. R. Evid. 901(a). Federal Rule of Evidence 901(a) requires that the government "make only a prima facie showing of authenticity 'so that a reasonable juror could find in favor of authenticity or identification.'" United States v. Chu Kong Yin, 935 F.2d 990, 996 (9th Cir. 1991) (quoting United States v. Blackwood, 878 F.2d 1200, 1202 (9th Cir. 1989)); see also United States v. Black, 767 F.2d 1334, 1342 (9th Cir. 1985). Once the government meets this burden, "[t]he credibility or probative force of the evidence offered is, ultimately, an issue for the jury." Black, 767 F.2d at 1342.

To be admitted into evidence, a physical exhibit must be in substantially the same condition as when the crime was committed. The court may admit the evidence if there is a "reasonable probability the article has not been changed in important respects." United States v. Harrington, 923 F.2d 1371, 1374 (9th Cir. 1991). This determination is to be made by the trial judge and will not be overturned except for clear abuse of discretion. Factors the court may consider in making this determination include the nature of the item, the circumstances surrounding its preservation, and the likelihood of intermeddlers having tampered with it. Gallego v. United States, 276 F.2d 914, 917 (9th Cir. 1960).

F. Chain of Custody

The test of admissibility of physical objects connected with the commission of a crime requires a showing that the object is in substantially the same condition as when the crime was committed (or the object seized). Factors to be considered are the nature of the article, the circumstances surrounding its preservation and custody and the likelihood of intermediaries tampering with it. There is,

however, a presumption of regularity in the handling of exhibits by public officials. United States v. Kaiser, 660 F.2d 724, 733 (9th Cir. 1981), overruled on other grounds by United States v. De Bright, 730 F.2d 1255, 1259 (9th Cir. 1984) (en banc). The authenticity of proposed exhibits may be proven by circumstantial evidence. United States v. Natale, 526 F.2d 1160, 1173 (2d Cir. 1975); United States v. King, 472 F.2d 1, 9-11 (9th Cir. 1973). Moreover, the prosecution need only prove a rational basis from which the jury may conclude that the exhibits did, in fact, belong to the defendant. Fed. R. Evid. 401(a).

If the trial judge finds that there is a reasonable possibility that the piece of evidence has not changed in a material way, the Court has discretion to admit the evidence. Kaiser, 660 F.2d at 733. The government is not required, in establishing chain of custody, to call all persons who may have come into contact with the piece of evidence. Gallego, 276 F.2d at 917. Gaps or defects in chain of custody go to the weight of the evidence rather than its admissibility. United States v. Matta-Ballesteros, 71 F.3d 754, 769-70 (9th Cir. 1995); United States v. Robinson, 967 F.2d 287, 292 (9th Cir. 1992).

G. Cross Examination

The scope of a cross-examination is within the discretion of the trial court. See Fed. R. Evid. 611(b).

The district court has broad authority to control the extent of cross examination, and "in its discretion may limit cross-examination in order to preclude repetitive questions, upon determining that a particular subject has been exhausted, or to avoid extensive and time-wasting exploration of collateral matters." United States v.

Weiner, 578 F.2d 757, 766 (9th Cir. 1978); see also Price v. Kramer, 200 F.3d 1237, 1252 (9th Cir. 2000) (upholding court's refusal to allow additional questioning where "defense counsel had already asked that question and received the same answer a number of times"). This includes the discretion to preclude repetitive questions by successive defense counsel in multi-defendant cases. Amsler v. United States, 381 F.2d 37, 51 (9th Cir. 1967) (finding pre-trial order precluding repetitive questioning by successive defense counsel to be a "reasonable restriction . . . within the sound discretion of the court").

H. Impeaching Witnesses

Federal Rule of Evidence 608(a) permits attacks on a witness's credibility through testimony about the witness's general character or reputation for truthfulness or untruthfulness. Fed. R. Evid. 608(a). However, extrinsic evidence (including testimony from third-party witnesses) about the witness's specific instances of conduct for the purpose of attacking the witness's character for truthfulness or untruthfulness is prohibited, except in the case of prior convictions. Fed. R. Evid. 608(b). Counsel may only probe specific instances of conduct probative of a witness's character for truthfulness or untruthfulness during cross-examination (without proffering extrinsic evidence) with respect to (1) the testifying witness or (2) other witnesses about whose character the witness has testified about. Id. Thus, counsel may not offer testimony or any other extrinsic evidence about specific instances of conduct for the purpose of attacking a testifying witness's credibility.

I. Photographs

The government intends to offer a limited number of representative photographs to aid the jury's understanding of the defense articles alleged in the charges. Photographs are generally admissible as evidence. See United States v. Stearns, 550 F.2d 1167, 1171 (9th Cir. 1977) (photographs of crime scene admissible). Photographs should be admitted so long as they fairly and accurately represent the event or object in question. United States v. Oaxaca, 569 F.2d 518, 525 (9th Cir. 1978). The Ninth Circuit has held that "[p]hotographs are admissible as substantive as well as illustrative evidence." United States v. May, 622 F.2d 1000, 1007 (9th Cir. 1980). Exemplary photos of the defense articles at issue in this case - that is, photos of the types of defense articles at issue, but not the specific defense articles that defendant actually procured or attempted to procure or brokered or attempted the broker the sale of - that the government intends to offer in this regard are attached hereto as Exhibit A.

J. Demonstratives

The government may use charts, graphics, and other visual aids to help the jury understand the evidence relating to defendant's complex financial and business transactions. The government is also considering other potential demonstratives that might facilitate the presentation of its evidence.

Demonstrative aids may be used in the trial judge's discretion with a limiting instruction that they are not evidence, but are used for the purpose of aiding the jury in its examination of the evidence. United States v. Wright, 412 F. App'x 993, 993 (9th Cir. 2011) (holding no error in use of demonstrative aid by government).

K. Cross-Examination of Defendant

A defendant who testifies at trial may be cross-examined as to all matters reasonably related to the issues she puts in dispute during direct examination. "A defendant has no right to avoid cross-examination on matters which call into question his claim of innocence." United States v. Miranda-Uriarte, 649 F.2d 1345, 1353-54 (9th Cir. 1981).

Defendant's credibility will be crucial if he chooses to testify in order to refute the government's showing of knowledge and intent. Indeed, because defendant is the only witness with "direct" evidence of his own knowledge and intent, if he takes the stand to deny any knowledge of the laws prohibiting his charged conduct or his mental state in violating those laws, his credibility becomes a key issue. Accordingly, cross-examination of defendant about other fraudulent conduct in which he has engaged or false statements that he has made is necessary for the jury to weigh whether defendant's denial of knowledge and intent is credible given his other actions. As the Ninth Circuit has held, Federal Rule of Evidence 608(b) expressly permits questioning into prior behavior to challenge credibility because "[e]vidence of prior frauds is considered probative of the witness's character for truthfulness or untruthfulness." United States v. Gay, 967 F.2d 322, 328 (9th Cir. 1992).

The Ninth Circuit has repeatedly held that both participation in fraudulent transactions and the use of false statements are considered probative of truthfulness and thus admissible on cross-examination pursuant to Rule 608(b). See, e.g., United States v. Gay, 967 F2d 322 (9th Cir. 1992) ("Evidence of prior frauds is considered probative of the witness's character for truthfulness or

untruthfulness"); United States v. Jackson, 882 F.2d 1444, 1446 (9th Cir. 1989); United States v. Munoz, 233 F3d 1117, 1135 (9th Cir. 2000) ("Evidence of prior frauds perpetrated by the witness is generally considered probative of the witness's truthfulness") (superseded by statute on other grounds, 18 U.S.C. § 1341). The fact that defendant's pursuit of this fraudulent transaction and use of false statements continued until approximately one month before his arrest further increases the probative value of this evidence. See Jackson, 882 F.2d at 1448 (noting that "remoteness remains a relevant factor for the trial court to consider in assessing the probative value of the evidence," and finding that conduct 14 years prior was not too remote to probative).

Rule 608(b) has generally been interpreted to prohibit the admission of extrinsic evidence to prove prior misconduct not resulting in a conviction. Jackson, 882 at 1448. However, should defendant falsely testify on cross-examination that he did not engage in these fraudulent schemes or make the statements indicated by the evidence, the government would be permitted to impeach him with that evidence of his prior inconsistent statements pursuant to Rule 613. Id.

The prejudicial effect of such evidence, if any, can be addressed by a limiting instruction. The admission of evidence harmful to the defendant's case does not necessarily constitute unfair prejudice. United States v. Fagan, 996 F.2d 1009, 1015 (9th Cir. 1993). Unfair prejudice results from evidence that "provokes an emotional response in the jury or otherwise tends to affect adversely the jury's attitude toward the defendant wholly apart from its

judgment as to his guilt or innocence of the crime charged." Id. (internal quotation marks omitted).

L. Proffer Statements

On four occasions in 2016, defendant met with HSI agents and the United States Attorney's Office for proffer sessions. Should defendant testify contrary to his statements during the proffer session, the government intends to cross-examine him based on the information he provided and statements he made during the proffer session. In the proffer agreements that defendant and his counsel signed prior to commencing each proffer session, he agreed that the government may use defendant's statements at the proffer session for the purposes of cross-examination should he testify, or to refute or counter at any stage of the proceedings (including during the government's case-in-chief at trial) any evidence, argument, statement or representation offered by or on behalf of defendant.

M. Character Evidence

The Supreme Court has recognized that character evidence -- particularly cumulative character evidence -- has weak probative value and great potential to confuse the issues and prejudice the jury. Michelson v. United States, 335 U.S. 469, 480, 486 (1948). Trial courts thus have wide discretion to limit the presentation of character evidence. Id. at 480.

In addition, the form of the proffered evidence must be proper. Federal Rule of Evidence 405(a) sets forth the sole methods for which character evidence may be introduced. It specifically states that, where evidence of a character trait is admissible, proof may be made in two ways: (1) by testimony as to reputation and (2) by testimony as to opinion. See Fed. R. Evid. 405(a). Thus, a defendant may not

introduce specific instances of his good conduct through the testimony of others. See Michelson, 335 U.S. at 477. On cross-examination of a defendant's character witness, however, the government may inquire into specific instances of a defendant's past conduct relevant to the character trait at issue. See Fed. R. Evid. 405(a). In particular, a defendant's character witnesses may be cross-examined about their knowledge of the defendant's past crimes, wrongful acts, and arrests. See Michelson, 335 U.S. at 482. The only prerequisite is that there must be a good-faith basis that the incidents inquired about are relevant to the character trait at issue. See United States v. McCollom, 664 F.2d 56, 58 (5th Cir. 1981).

N. Impeachment by Prior Convictions

Defendant has advised that he intends to inquire whether the government's source of information has sustained prior criminal convictions in Jordan, pursuant to Federal Rule of Evidence 609. In response to the government's motion in limine to preclude admission of the underlying documents and inquiry into the SOI's knowledge of any such convictions, Defendant has agreed not to attempt to offer the underlying documents purportedly evidencing criminal convictions, as they clearly do not meet the requirements of Rule 609. The Court has reserved ruling as to whether defendant may so inquire. The scope of inquiry permitted when lodging such attacks is limited. "Absent exceptional circumstances, evidence of a prior conviction admitted for impeachment purposes may not include collateral details and circumstances attendant upon the conviction. Generally, only the prior conviction, its general nature, and punishment of felony range are fair game . . . ." United States v. Osazuwa, 564 F.3d 1169, 1175

(9th Cir. 2009) (alterations adopted) (citations omitted) (internal quotation marks omitted). Exceptional circumstances may include, for example, when a witness attempts to "explain away" prior convictions by offering their "own version of the underlying facts" that tend to create a false impression about the conviction. See United States v. Perry, 857 F.2d 1346, 1352 (9th Cir. 1988). Otherwise, the scope of examination regarding prior convictions should be limited to the "to establishing the bare facts of the conviction: usually the name of the offense, the date of the conviction, and the sentence." Weinstein's Federal Evidence § 609.20[2] at 609-57-60.

Accordingly, in the event the Court rules that any inquiry into these alleged convictions is appropriate, the Court should permit cross-examination into only the date of the conviction, the crime, and the sentence imposed.

O. Video and Audio Recordings

The government will introduce numerous clips from video and audio recordings of telephone conversations and in-person meetings involving the Defendant. A recording is admissible upon a showing that it is "accurate, authentic, and generally trustworthy." United States v. King, 587 F.2d 956, 961 (9th Cir. 1978). For example, testimony that a recording depicts evidence that the witness observed is sufficient to authenticate the recording. Fed. R. Evid. 901(b); United States v. Smith, 591 F.3d 974, 979-80 (8th Cir. 2010).

There is no rigid set of requirements to lay the foundation for the government's evidence. As long as the government makes a prima facie showing of authenticity, the "probative force of the evidence offered is, ultimately, an issue for the jury." United States v. Blackwood, 878 F.2d 1200, 1202 (9th Cir. 1989). The government will

rely on the testimony of Inspector Rosas, who can authenticate the recording of the interview she conducted of defendant.

All duly admitted recorded conversations must be played in open court. Allowing jurors to take into the jury deliberation room recorded conversations that were not played in open court is structural error requiring automatic reversal if a defendant objects to allowing the jurors to have the un-played calls in the jury room. United States v. Noushfar, 78 F.3d 1442, 1445-46 (9th Cir. 1996).

A lay witness, including a participant in a recorded conversation, may give opinion testimony on the meaning of otherwise vague or ambiguous statements made in the recordings. See United States v. Freeman, 498 F.3d 893, 902 (9th Cir. 2007) ("A lay witness may provide opinion testimony regarding the meaning of vague or ambiguous statements [in recorded conversations]"); United States v. De Peri, 778 F.2d 963, 977-78 (9th Cir. 1985).

P. Charts and Summary Witnesses

To streamline the presentation of evidence for the jury, the government intends to use a summary chart as part of its case in chief. This chart summarizes the source of each exhibit that was extracted from defendant's digital devices or his e-mail account. In a case involving hundreds of such exhibits that originated from multiple sources, use of this chart will aid the jury in understanding where specific pieces of evidence were found and will save considerable time by obviating the need for a government witness to identify the source of each exhibit one by one. A prototype of the chart that the government intends to offer in this regard is attached hereto as Exhibit B.

Charts and summaries of evidence are governed by Federal Rule of Evidence 1006, which permits the introduction of charts, summaries, or calculations of voluminous writings, recordings, or photographs which cannot conveniently be examined in court. See Fed. R. Evid. 1006. Accordingly, a summary chart may be admitted as substantive evidence when the proponent establishes that the underlying documents upon which the summary is based are voluminous, admissible, and available for inspection. Id.; see also United States v. Meyers, 847 F.2d 1408, 1412 (9th Cir. 1988). All that is required for the rule to apply is that the underlying writings be voluminous and that in-court examination not be convenient. United States v. Scales, 594 F.2d 558, 562 (6th Cir. 1979). Although the materials underlying the summary must be "admissible," they need not themselves be "admitted" into evidence. Meyers, 847 F.2d at 1412.

In addition, the summary chart must be accurate, authentic, and properly introduced. Scales, 594 F.2d at 562. Where a chart does not contain complicated calculations that would require an expert for accuracy, authentication of the chart requires only that the witness (1) have properly catalogued the exhibits and records upon which the chart is based; and (2) have knowledge of the analysis of the records referred to in the chart.

Neither of these requirements necessitates any special expertise. The person who supervises the compilation of the summary chart is the proper person to attest to its authenticity and accuracy. Id. at 563. In addition, summary charts may be used by the government in its opening statement. Indeed, "such charts are often employed in complex conspiracy cases to provide the jury with an outline of what the government will attempt to prove." United

States v. De Peri, 778 F.2d 963, 979 (3d Cir. 1985) (approving government's use of chart); United States v. Rubino, 431 F.2d 284, 290 (6th Cir. 1970) (same).

Also, apart from Rule 1006, a summary of evidence may be presented to the jury with proper limiting instructions. Rule 611(a) recognizes that the trial court must "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, [and] (2) avoid needless consumption of time . . . ." Fed. R. Evid. 611(a); see also United States v. Gardner, 611 F.2d 770, 776 (9th Cir. 1980) (in tax case, use of chart summarizing defendant's assets, liabilities, and expenditures "contributed to the clarity of the presentation to the jury, avoided needless consumption of time, and was a reasonable method of presenting the evidence").

Q. Scope of Conspiracy and Inextricably Intertwined Acts

Among other violations, defendant is charged with conspiracy to violate the Arms Export Control Act, engaging in unlawful brokering activities without a license, and conspiracy to transfer and to use missile systems designed to destroy aircraft. These allegations stem from defendant's numerous transactions and negotiations involving the weapons systems, munitions, defense services, and other controlled items, including those listed in the First Superseding Indictment ("FSI") (collectively, "the FSI commodities"). Beyond the FSI commodities, the evidence reflects that defendant also engaged in other illicit transactions and negotiations involving a wide array of other defense articles and services.

In many instances, defendant's own communications with his co-conspirators as to the FSI commodities also simultaneously reference other defense articles and services not specifically enumerated in the FSI. In such instances, defendant's engagement in illegal brokering activities relating to FSI commodities as well as other controlled items in the same communications clearly "constitutes a part of the transaction that serves as the basis for the criminal charge." United States v. Vizcarra-Martinez, 66 F.3d 1006, 1012 (9th Cir.1995) ("Thus, when it is clear that particular acts of the defendant are part of, and thus inextricably intertwined with, a single criminal transaction, we have generally held that the admission of evidence regarding those acts does not violate Rule 404(b)."). Where defendant chose to engage in illegal brokering activities with regard to a variety of items that he himself lumped together in a single offer or negotiation, all of the controlled commodities in which he sought to traffic are "so interwoven with the charged offense that they should not be treated as other crimes or acts for purposes of 404(b)." United States v. Loftis, 843 F.3d 1173, 1177 (9th Cir. 2016).

R. Evidence Admissible Under As Direct Evidence or Under Rule 404(b) of the Federal Rules of Evidence

The government has given notice of its intent to offer evidence that in 2015, during the charged conduct, defendant procured a fraudulent Ukrainian travel document in a false name in order to conceal his true identity and facilitate his illegal activities, which involved substantial international travel. As articulated in the government's notice and in its opposition to defendant's motion in limine to preclude this evidence, the evidence is admissible as

direct evidence showing defendant's consciousness of guilt. It is also admissible pursuant to Rule 404(b) as evidence of defendant's intent, preparation, plan, knowledge, absence of mistake, and lack of accident. The Court reserved ruling on this issue.

In the event that the government does not offer this evidence in its case in chief (either because the Court precludes it or because the government elects not to offer it), this evidence would be proper on cross-examination of defendant and/or in rebuttal should defendant testify. In addition to its admissibility as evidence of consciousness of guilt and intent, this evidence of defendant's participation in a fraudulent transaction and his use of false statements is probative of his truthfulness.

The fact that defendant's pursuit of this fraudulent transaction and use of false statements continued until approximately one month before his arrest further increases the probative value of this evidence. See Jackson, 882 F.2d at 1448 (noting that "remoteness remains a relevant factor for the trial court to consider in assessing the probative value of the evidence," and finding that conduct 14 years prior was not too remote to probative).

Should defendant testify, inquiry and evidence of various other fraudulent transactions in which defendant has engaged and other false statements he has made would also be appropriate.

S. Lay Opinion Testimony Regarding Coded Language

A witness who is "not testifying as an expert" may nonetheless offer testimony "in the form of an opinion" provided the opinion is "(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other

specialized knowledge within the scope of Rule 702." See Fed. R. Evid. 701. In this regard, it bears mention that the Federal Rules of Evidence do not distinguish between "lay witnesses" and "expert witnesses," but between lay and expert testimony. See J. Cotchett, Federal Courtroom Evidence, § 701.2 (5th ed. 2008).

Under Rule 701, the government may properly ask lay witnesses to testify about their opinion regarding the content and meaning of telephone calls and written communications to which they were not a party. See, e.g., United States v. Ontiveros, 598 F. App'x 482, 484 (9th Cir. 2015) ("The district court properly admitted government witness Max Torvisco's testimony as lay testimony under Federal Rule of Evidence 701. Torvisco satisfied Rule 701's perception requirement because, as a member of the Mexican Mafia, he had personal knowledge of the contents of the calls and could testify to known facts, including coded terms used by his co-conspirators."); see also United States v. Gadson, 763 F.3d 1189, 1212-13 (9th Cir. 2014) (same, regarding testimony of law enforcement officer).

Law enforcement testimony regarding jargon and coded language "may be both expert and lay testimony, depending on the circumstances." Gadson, 763 F.3d at 1212 (internal quotation mark omitted). It is well settled that law enforcement officers who have been involved in an investigation may testify regarding the proper interpretation of ambiguous conversations based on their investigative work. See id. at 1209-10 (allowing law enforcement officer to offer lay testimony regarding proper interpretation of coded language, and nothing that the officer "had been involved in the investigation of the drug conspiracy since early 2010," had included searches of multiple residences, surveillance, and review of

prison phone calls); see also United States v. Freeman, 498 F.3d 893, 904-05 (9th Cir. 2007) (officer's interpretation of intercepted phone calls admissible under Rule 701 where interpretation was "of ambiguous conversations based upon [the officer's] direct knowledge of the investigation"); United States v. Simas, 937 F.2d 459, 464-65 (9th Cir. 1991) (admission of lay testimony by law enforcement officers regarding "their understanding of what [defendant] meant to convey by his vague and ambiguous statements" was not abuse of discretion).

In this case, the government has notified defense counsel that SA Peterson will testify regarding his understanding of ambiguous terms in various communications among defendants and other co-conspirators. SA Peterson's testimony is permissible as lay opinion testimony, because it is based on his experience as an investigator on this case since 2014.

T. Discretion as to Order of Proof

The order of proof is a matter committed to the discretion of the district court, which may conditionally introduce evidence or otherwise permit deviations from the natural order of a case. E.g. United States v. Zemek, 634 F.2d 1159, 1169 (9th Cir. 1980); see also United States v. Perez, 658 F. 658 (court may admit co-conspirator statement subject to motion to strike if foundation for admissibility not laid, so long as the motion to strike would cure any defect); United States v. Turner, 528 F.2d 143, 162 (9th Cir. 1975) ("The trial judge has wide discretion in supervising the order of proof in a conspiracy case."); United States v. Avendano, 455 F.2d 975, 975 (9th Cir. 1972) (calling witnesses out-of-order).

The government intends to call several witnesses and requests that if necessary their schedules be accommodated. In particular, the government has given notice of an intent to call U.S. State Department employee Simon Davidson-Hood as an expert to establish that defense articles and defense services at issue in this case were designated on the United States Munitions List and that defendant's conduct constituting in brokering as that term is used in the ITAR. Mr. Davidson-Hood will also offer percipient witness testimony that he confirmed that defendant did not have a license from the State Department to engage in any of the charged conduct. Due to family obligations, Mr. Davidson-Hood, who resides out of state, must return home before the evening of November 7, 2018, and must remain there through November 14, 2018. Because of the possibility that the government could conclude its case in chief before Mr. Davidson-Hood's availability re-opens, the government intends to call him before November 7, 2018. That may either mean calling him before the SA Peterson or possibly even the undercover agent testifies as to many of the defense articles and services at issue, or interrupting SA Peterson's or the undercover agent's testimony to offer Mr. Davidson-Hood (the government prefers the former as less disrupting and confusing to the jury).

Additionally, the government intends to call as witnesses two Greek citizens who reside in Athens, Greece. Their testimony is expected to be very brief. One, a lieutenant with the Hellenic National Police, will testify that he participated in and observed the seizure of digital devices from defendant's presence and premises at and after his arrest in Greece, and that he provided them to an investigator employed by HSI at the U.S. Embassy Athens. The second,

the aforementioned investigator with HSI in Athens, will testify that he received the digital devices and sent them to HSI in Long Beach. The defense has declined to stipulate to this expected testimony, and the government has thus arranged for their travel to Los Angeles. The government reasonably expects to call both of these witnesses to testify between November 3-5, 2018, and has accordingly requested them to be present during that time frame. Should the trial not proceed according to the timetable the government reasonably anticipates, the government nonetheless intends to call them during that time frame in order to permit them to return to Greece, where they have work and other obligations.

U. Transcripts of Recordings

The government has prepared written transcripts of the audio recordings as an aid to the jury in listening to recordings. See United States v. Turner, 528 F.2d 143, 167 (9th Cir. 1975) (permitting the transcripts of sound recordings to be used contemporaneously with the introduction of the recordings into evidence). Copies of the government's transcripts have been provided to the defense and are available, should the Court desire them in advance of trial. The transcripts will be displayed on a screen simultaneous to the playing of the audio files, but the transcripts will not be admitted into evidence.

V. Stipulations of Fact

The government and the defense have entered into and filed a stipulation to certain facts surrounding the forensic extraction of data from defendant's digital devices.

W. Translations

Some of the evidence, including recordings and written documents, have been translated from a foreign language. The government and the defense have agreed in principle to enter stipulations to the accuracy of those translations, and the government anticipates offering such stipulations when all final translations have been received.

X. Rule 15 Depositions

Between June 20, 2018, and June 28, 2018, at the request of both parties and pursuant to an order of the Court, the government and defense counsel deposed three foreign witnesses in Tel Aviv, Israel, and Tbilisi, Georgia. The Court presided over, and defendant Rami Ghanem attended, those depositions via video teleconference. Defendant's lead defense counsel, Michael Evans, participated in the depositions live, and his second defense counsel, H. Dean Steward, participated via video teleconference from defendant's location.

The parties filed a joint motion requesting an order finding the three foreign witnesses to be unavailable for purposes of Rule 84(a)(5), and permitting them to use the recorded testimony pursuant to Rule 804(b)(1) and Rule 15(h), subject to evidentiary objections that may be raised to specific portions of the testimony. The Court granted that motion in a ruling from the bench on October 22, 2018.

The government proposes to play substantial portions of the direct testimony and cross-examination of the three foreign witnesses, with the exception of testimony as to which objections were lodged and sustained. The defense has indicated its assent to that proposed procedure. No foundational or other witness is required to introduce the testimony.

During the depositions, the Court received certain exhibits that were separately offered by both parties. The government proposes to halt the deposition play-back immediately prior to the discussion of each exhibit that was admitted into evidence, and publish the exhibit at issue, so that the jury may review it during that portion of the deposition testimony.

V. AFFIRMATIVE DEFENSES

A. Entrapment

Defendant has given notice of an intent to pursue an entrapment defense as to Counts One through Four of the Trial Indictment. Entrapment is "a relatively limited defense." United States v. Russell, 411 U.S. 423, 434 (1973). It is rooted in the notion that criminal liability should not lie where the government induced a defendant to commit crimes that he would not otherwise have been inclined to commit. Id. at 434-35. The entrapment defense does not apply to the brokering violations alleged in Counts Five and Six, nor does it apply to the anti-aircraft missile trafficking violations alleged in Count Seven.

The entrapment defense has two elements: 1) defendant was induced to commit the crime by a government agent, and 2) defendant was not otherwise predisposed to commit the crime. To establish that defendant was not entrapped to commit the crimes alleged in Counts One through Four, the government must thus prove beyond a reasonable doubt either that defendant was predisposed to commit those offenses, or that he was not induced by a government agent to commit them.

For its case in chief, the government has prepared a relatively streamlined presentation of the massive volume of relevant evidence uncovered by the investigation. However, should defendant pursue the

entrapment defense, the government would present a far more robust sampling of the multitude of evidence showing defendant's vast, varied, and far-reaching arms-trafficking activities in order to meet its burden to show that defendant was predisposed to enter into the discrete and comparatively small transaction involving the undercover agent. Depending on what defendant offers, the government may also rebut it with additional evidence as to the lack of inducement by any government agent.

B. Public Authority

Defendant gave notice of intent to pursue a defense of public authority in February 2018, as required by Rule 12.3 and the order of this Court. Rule 12.3 specified that for "any defense of actual or believed public authority," this notice was required to identify: 1) the law enforcement agency or federal intelligence agency on whose behalf defendant claimed to have acted, 2) the agency member on whose behalf defendant claimed to have acted, and 3) the time during which defendant claimed to have acted. Defendant's notice listed one U.S. agency, namely "Homeland Security ICE," and one individual, namely a source of information (SOI) used by the government to introduce the undercover agent to defendant, as the "agency member." No other U.S. agencies were identified as purported sources of actual or believed public authority for defendant's criminal violations. Defendant's notice also listed a foreign entity, namely "Libyan Defense Ministry/Crisis Operations Management Room," and agency members as "Prime Minister Khalifa al-Ghawil and members of the Libyan Defense Ministry/Crisis Operations Management Room."

In April 2018, as required by Rule 12.3 and multiple orders of the Court, defendant provided a list of witnesses in support of his

public authority defense, which gave notice of defendant's intent to rely on twelve witnesses in support of his noticed defense of public authority. Armed with those required notices, the parties proceeded to litigate the availability of a defense of actual or believed public authority in this case. That litigation, and the Court's resulting order, were premised on the notice that defendant provided as required by Rule 12.3.

In a written order dated June 21, 2018, the Court granted the government's motion to preclude defendant's noticed public-authority defense. (CR 265) Finding that the SOI had no actual authority to sanction defendant's crimes, the Court held that defendant was precluded from premising an affirmative defense of public authority on his contact with the SOI. (Id.) The Court further held that defendant was precluded as a matter of law from presenting a defense that Libyan individuals gave him public authority to commit the crimes charged. (Id.)

On September 28, 2018, defendant gave notice of his intent to call one witness, Aref Al Zaben. On October 12, 2018, defendant attempted to give belated notice that Mr. Al Zaben would support his defense of public authority. The government has moved to exclude evidence from this witness as irrelevant, inadmissible hearsay, precluded by failure to give the notice required by Rule 12.3 within the time frame set by the Court and the Rule, and precluded by the Court's prior order. The Court has ordered defendant to provide a more detailed offer of proof by October 29, 2018.[6]

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[6] The Court has further ordered defendant not to disclose classified information, a prospect raised by certain elements of Mr. Al Zaben's background. As noted in the government pleadings on this

C. Other Affirmative Defenses

Defendant has not given notice of any other affirmative defenses.

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issue, defendant, his counsel, and Mr. Al Zaben are not in a position to know or evaluate what information may be classified by the U.S. government. The Court and the prosecution may be similarly unable to make such a determination.